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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 09/994,088 | 11/14/2001 | Jeffrey L. Trudeau | 004608.00003 | 8571 |
| 22908 | 7590 | 07/22/2004 | EXAMINER | |
| BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606 | | | PRIDDY, MICHAEL B | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3732 | |

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/994,088

Applicant(s)

TRUDEAU ET AL.

Examiner

Michael B Priddy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 and 51-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2,3,12,14-17,25-28,30-34,41,42,44-49 and 51-59 is/are allowed.
- 6) ☒ Claim(s) 1,5-11,13,18-24,29,35-40 and 43 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5-11, 13, 18-24, 29, 35-40 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Sandreid (U.S. 5,083,350). Sandreid teaches a clamp for clamping an elongate member 20 comprising: a housing 10 for receiving the elongate member 20, a saddle member 16 (means for engaging the elongate member in at least two positions) movably mounted relative to the housing 10; a platen 17 (means for engaging a substantial periphery of the elongate member) movably mounted relative to the housing 10; a lever 31 cooperating with the platen 17 for moving the saddle member 16 and platen 17 relative to the housing 10; and an engaging surface 18/19 for engaging the elongate member 20; wherein the lever 31 (means for selectively moving the platen and saddle member relative to the housing) is pivotably attached to the saddle member in a slot 34, the slot 34 being formed in the saddle member 16 and having at least two distinct positions (ends) allowing the lever 31 to pivot from at least two positions (one position shown in solid lines and the other in broken lines); wherein engaging surfaces 18/19 are associated with both the platen 17 and the saddle member 16 for engaging the member 20; wherein a portion of a lengthwise cross-section of the engaging surface is non-linear. Sandreid further teaches a barrel-shaped clamping surface 21 adapted to receive a tensioning tool.

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Concerning the language "integrated into" of claims 5-7, 19-21 and 35-37, the Examiner has interpreted this to be equivalent to "integral with". "Integral is sufficiently broad to embrace constructions united by such means as fastening and welding." *-In re Hotte* (CCPA) 177 USPQ 326. The Examiner contends that since the engaging surface, housing, saddle and platen of Sandried are fastened together, they may be considered integral with (integrated into) on another. Considering the language "engage at least a portion of a periphery", it is the Examiner's belief that the engaging surfaces of Sandreid, while having tooth-like formations that may penetrate the periphery of the member 20, must engage some portion of the periphery at least around the point of penetration.

Allowable Subject Matter

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

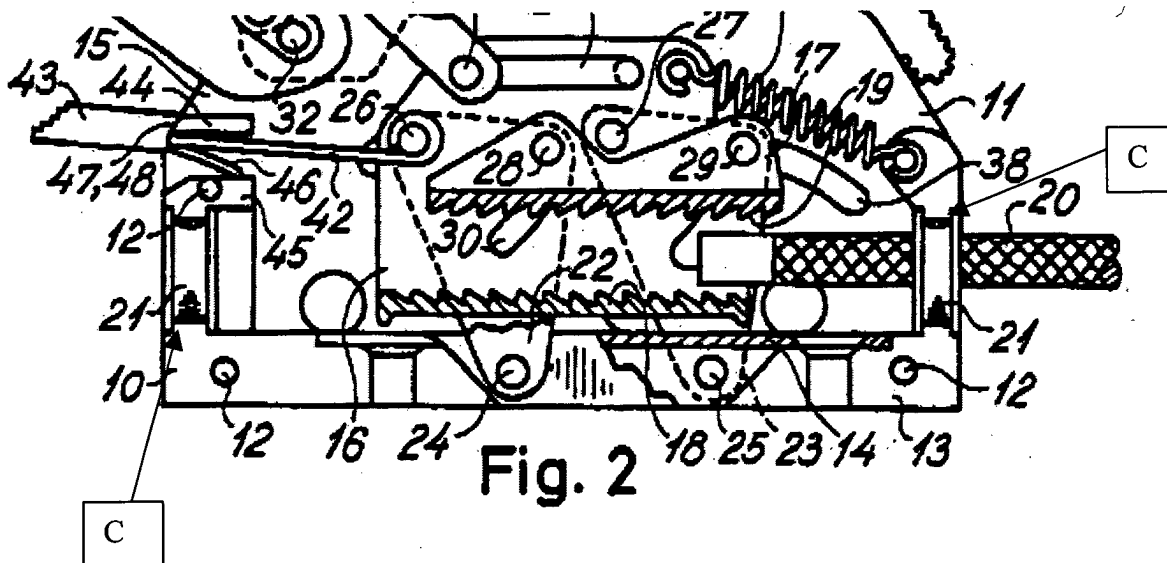
Claims 2, 3, 12, 14-17, 25-28, 30-34, 41, 42, 44-49 and 51-59 are allowed.

Response to Arguments

Applicant's arguments filed 06/07/2004 have been fully considered but they are not persuasive. Applicant has argued that Sandried et al. does not teach the "coupling surface adaptive to interface with a tensioning tool" of claims 1, 13, 29 and 49. Specifically, Applicant has reminded the Examiner that "a reference that is allegedly

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anticipatory must be enabling." The Examiner would like to point out that "a claim containing a 'recitation with respect to the matter in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus for a prior art apparatus' if the prior art apparatus teaches all the structural limitations of the claim." (MPEP 2114) It is the Examiner's position that the language "adaptive to interface with a tensioning tool" is equivalent to requiring the clamping surface be used to interface with a tensioning tool. This amounts to a claimed manner of operating. The Examiner asserts all that is required to meet the limitations "a coupling surface adaptive to interface with a tensioning tool" is a surface onto which a tensioning tool may be clamped. Rings 21 of Sandried et al. include concave external surfaces C which would allow for coupling of a tensioning device.



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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is (703) 308-8620. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Michael B. Priddy

Michael B. Priddy
July 21, 2004